

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1500 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA  
and  
Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

LAVJIBHAI MANDANBHAI PATEL  
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Appearance:

MR KC SHAH ASSTT GOVERNMENT PLEADER for Petitioner  
MR HP RAWAL for Respondent No. 1  
MR BP TANNA for Respondent No. 2  
MR PRANAV DESAI for Respondent No. 4  
None for respondents No.3 & 5  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA  
and  
MR.JUSTICE H.K.RATHOD

Date of decision: 06/04/2000

ORAL JUDGEMENT

[ Per : D.C.Srivastava, J. ]

#. The State of Gujarat - the defendant No : 5 has preferred this appeal against judgment and decree dated 14-10-1996 of Second Joint Civil Judge (SD), Rajkot passed in Special Civil Suit No : 35 of 1992. Originally only four defendants were arrayed in the suit. The appellant - defendant No : 5 was subsequently arrayed on the objection of Rajkot Municipal Corporation defendant No : 1 as defendant No : 5.

#. The facts giving rise to this appeal have been narrated in detail in First Appeal No : 93 of 1997. No doubt, this defendant was impleaded on the objection of the defendant No : 1, yet no relief was claimed by the plaintiff against this defendant. For all purposes, the appellant - defendant No : 5 was proforma defendant No.5.

#. The trial court in the operative portion of the judgment at Sr.No : 2 has passed the following order;

"No decree is passed against the defendant No.5"

#. It is thus clear that though no decree has been passed against the appellant - defendant No.5, yet it has preferred the instant appeal. If no decree was passed or no adverse order was passed against the State of Gujarat, it is not understood how the appeal has been filed by the State of Gujarat. However, after going through the memo of appeal, it appears that because the learned Civil Judge has given finding that the land in question of Survey No : 479, area 4 acres and 7 gunthas belongs to the plaintiff - Lavajibhai Mandanbhai Patel, hence, the State of Gujarat felt aggrieved inasmuch as, according to the State of Gujarat, this land in proceedings under repealed Urban Land Ceiling Act of 1976 vested in the State of Gujarat. It is because of this adverse finding that the instant appeal has been preferred.

#. The learned counsel representing the State viz. Assistant Government Pleader Shri K.C.Shah has been heard so also Shri H.P.Rawal for the respondent No.1, Shri B.P.Tanna, Senior Advocate for respondent No.2 and Shri Pranav G. Desai, learned counsel for respondent No : 4.

None appeared for respondents No. 3 & 5.

#. We have considered 11 (eleven) grounds contained in the memo of appeal and also the contentions of the learned AGP and that of the learned counsel for the respondents.

#. We do not find any merit in the contention of the learned AGP that the decree passed by the learned trial Judge is illegal or erroneous. Since no decree has been passed against the State of Gujarat, the question of decree being illegal cannot be examined on the motion of the appellant.

#. We also don't find any merit in the attack that the learned judge of the Court below has failed to appreciate oral and documentary evidence in proper perspective.

#. So far as the third ground is concerned, it relates to ownership of the State of Gujarat in the land in question. The dispute relates to survey No : 479, measuring 4 acres and 7 gunthas and for the reasons given while deciding First Appeal No : 93 of 1997, we recorded finding that the finding of the Court below regarding ownership of this disputed land is correctly recorded and the plaintiff was correctly held to be owner of the disputed land. It could not be shown by the learned AGP that even after the culmination of the proceedings under Urban Land Ceiling Act, 1976 and passing order declaring surplus land which was subsequently confirmed in appeal as well as by the Tribunal, the possession was ever taken by the State Government. The order of the State Government in revision was challenged in First Appeal No. 93 of 1997 which has been discussed in the aforesaid appeal. Since acquisition of the so called surplus land declared by the competent authority under the Urban Land Ceiling Act was not made by the State Government, in other words, since the State Government did not acquire vacant possession of the so called excess land, mere declaration of surplus land will not entitle the State Government to be treated as the owner of the said land. It is in evidence that possession of the surplus land so declared, remained with the plaintiff.

##. The Urban Land Ceiling Act 1976 was repealed by the Repeal Act 1999 which was adopted by the State of Gujarat as well. Under Section 3(1)(c) of the Repeal Act, if the excess land declared surplus could have been taken possession of by the State Government then, vesting of any land under sub Section 3 of Section 10 could have no effect. In the absence of any cogent evidence that

possession has been taken over by the State Government or any person duly authorised by the State Government in its behalf or the competent authority, it cannot be said that the State Government became the owner of the surplus land. Consequently, the finding of the Court below on Issue No : 1 holding ownership of the plaintiff in Survey No.479, area 4 acres and 7 gunthas does not suffer from any illegality.

##. We also don't find any merit in the ground of appeal that the trial Judge committed an error in joining the State Government as a party to the suit on the application of the Rajkot Municipal Corporation. No revision was preferred by the State of Gujarat against the order of the trial Judge impleading it as party. Moreover, there is no illegality in the order of the trial Court Judge in impleading the defendant No. 5 inasmuch as, it was atleast proper party to the suit.

##. We also do not find any merit in the ground that reasonable opportunity of hearing was not afforded to the appellant by the trial Judge.

##. We further don't find any merit in the ground that the trial Judge committed any error in placing reliance upon the map and report Exh.209 drawn by the Court Commissioner who was appointed with consent under the order of the High Court.

##. We also don't find any merit in the ground that the plaintiff should have approached the Deputy Collector for relief under the Bombay Land Revenue Code or that the trial Judge had no jurisdiction to entertain and decide the suit. Other grounds are also equally ornamental.

##. In the result, since no decree has been passed against the appellant by the Court below and further since the finding of the Court below on Issue No.1 does not suffer from any manifest illegality, we do not find any merit in this appeal which is liable to be dismissed.

##. The appeal is accordingly dismissed with no order as to costs.

[ D.C.Srivastava, J. ]

Date : 6-4-2000 [ H. K. Rathod, J. ]

#kailash#